

STATE OF MICHIGAN
COURT OF APPEALS

GREGORY J. CAUDILL and CAROL M.
CAUDILL,

UNPUBLISHED
March 23, 2006

Plaintiffs-Appellants,

v

DEJAN GUBERINICH, CHRISTINA
GUBERINICH, STEVEN WILD, JAMES
JOHNSON, and ELIZABETH JOHNSON,

No. 258606
Washtenaw Circuit Court
LC No. 02-000947-CH

Defendants-Appellees.

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court order granting summary disposition to defendants, holding that defendants had acquired an easement by prescription to park their vehicles on a strip of land owned by plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs and defendants are neighboring landowners with plaintiffs owning property that lies to the north of defendants' three lots. There is a 66-foot county right of way that runs between the parcels with the northern 33 feet of the right of way sitting on plaintiffs' property and the southern 33 feet of the right of way sitting on defendants' properties. The county road, North Lake Road, is located in the southern half of that right of way.

Due to the close proximity of the roadbed to defendants' houses, defendants, like their predecessors in interest, park their vehicles on the north side of the road. Plaintiffs claim that defendants park far enough off the road so that they are no longer on their portion of the right of way, but rather they park on land that belongs to plaintiffs. Plaintiffs filed their complaint seeking to prohibit defendants from parking on plaintiffs land.

A trial court's decision to grant summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Michigan Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 368; 699 NW2d 272 (2005). Summary disposition is properly granted under MCR 2.116(C)(10) when there is no genuine issue as to any material fact, and the moving party is

entitled to judgment as a matter of law. MCR 2.116(C)(10); *Michigan Dep't of Natural Resources, supra*, 472 Mich 368-369.

Affidavits, depositions, admissions, or other documentary evidence must be filed with a motion for summary disposition under MCR 2.116(C)(10) to support the grounds asserted in the motion. MCR 2.116(G)(3); *SSC Associates Ltd Partnership v General Retirement System of Detroit*, 192 Mich App 360, 363-364; 480 NW2d 275 (1991). “Opinions, conclusionary denials, unsworn averments, and inadmissible hearsay do not satisfy the court rule; disputed fact (or the lack of it) must be established by admissible evidence.” *Id.*

“An easement represents the right to use another’s land for a specified purpose. An easement by prescription results from use of another’s property that is open, notorious, adverse, and continuous for a period of fifteen years.” *Plymouth Canton Community Crier, Inc v Prose*, 242 Mich App 676, 679; 619 NW2d 725 (2000) (internal citations omitted). To be adverse or hostile, the use must be inconsistent with the rights of the owner and without permission asked or given. *Id.*, at 681.

Defendants filed two affidavits in this case showing that prior owners of the parcels now owned by defendants have used the disputed area of land for parking since at least 1954. One of those affidavits included a statement by a prior owner stating that his family and guests parked in the disputed area because he was told by the previous owners that the disputed location is where they parked. Plaintiffs did not file any affidavits, deposition testimony, or other documentary evidence in opposition to defendants’ affidavits.

Based on the admissible evidence presented as required by the court rules, plaintiffs have not established a question of material fact concerning the evidence presented by defendants. The evidence presented by defendants shows that neighboring landowners and their guests used the disputed parcel of land for parking since at least 1954. The use of that land was based on information given by prior owners of the southern parcels rather than express permission from landowners of the northern parcel in question. Such use was open, notorious, inconsistent with the rights of all the owners of the disputed parcel, and for a period of more than fifteen years.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra